UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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CLAUDINE FELICIANO,

Plaintiff,

v. 17 CV 5507 (AKH)

CORELOGIC SAFERENT, LLC,

Defendant.

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New York, N.Y.
July 18, 2019
2:30 p.m.

Before:

HON. ALVIN K. HELLERSTEIN,

District Judge

APPEARANCES

FISHMAN LAW, P.C.
Attorneys for Plaintiff Feliciano
BY: JAMES FISHMAN

KLAFTER OLSEN LESSER, LLP
Attorneys for Plaintiff Feliciano
BY: SETH R. LESSER

TROUTMAN SANDERS, LLP
Attorneys for Defendant Corelogic
BY: SETH R. LESSER

(Case called)

THE COURT: Good afternoon.

MR. FISHMAN: For the plaintiff, James Fishman, Fishman Law P.C.

MR. LESSER: Also for the plaintiff, Seth Lesser, of Klafter Olsen Lesser.

MR. ST. GEORGE: For the defendant, Timothy St. George, from the law firm of Troutman Sanders.

THE COURT: Be seated, everybody.

Plaintiff's motion?

MR. FISHMAN: Yes, your Honor.

THE COURT: Go ahead. Go to the podium.

MR. FISHMAN: Good afternoon, your Honor.

This is an action brought under the Fair Credit Reporting Act, 15 U.S.C. 1681 and specifically 1681(E)(B) which is the requirement that credit reporting agencies when they prepare a credit report and that they have reasonable procedures to assure maximum possible accuracy. That is the standard that the act sets out. This action is brought under 1681(N) which claims that the violation of (E)(B) was willful. Plaintiffs in these cases and FCRA cases have the option of suing under 1681(O) which is for a neglect violation or 1681(N) for a willful violation or both. And the standard --

THE COURT: What have you done?

MR. FISHMAN: We've sued under "N" and we are alleging

a willful violation of the statute.

THE COURT: So if I find there is no willfulness, you're out.

MR. FISHMAN: If at the end of the merits determination, if you determine there is no willfulness, you're correct. There is no lawsuit. We only sought a willfulness violation.

THE COURT: What's the difference in the damages you get?

MR. FISHMAN: Under "O" a plaintiff can get actual damages, whatever they can prove and that's it. Under "N" they can get actuals or statutory damages, if they don't have actuals of a range of 100 to $1000.

THE COURT: Supposing they have actual damages but a small amount. Are they confined then to actual damages?

MR. FISHMAN: If that's all they can prove and they seek to prove actual damages, they get actuals. They get statutories if they can't prove actuals. So you don't need to have actual damage to get the statutory damage if you show a willful violation.

THE COURT: This case is based on people being deprived of an opportunity to find an apartment because of wrong information being given out by the credit agency. Everyone will be damaged.

MR. FISHMAN: Everyone will have damage, actual

damage?

THE COURT: Yes.

MR. FISHMAN: Well, possibly. But the difference though, the significant difference and why this case is so well-suited for class treatment is that the negligent claim in actual damages requires an element of causation. Causation is only an element of the 1681(O) violation or claim not under "N". So there is no causation claim at all in this case.

THE COURT: Why as a representative of a class are you foregoing one of the remedies that is available to the class?

MR. FISHMAN: Well, for one thing, as the cases have held, actual damage class action cases are very, very difficult to certify for one thing because there are so many individual damage issues.

THE COURT: So you are taking your interest as a lawyer above the interest of your clients.

MR. FISHMAN: No. If the client has a minimal actual damage claim or can't necessarily prove causation, doesn't mean she doesn't have a lawsuit. She can still sue under "N" and not have to prove or not prove causation. There is many situations where a applicant for an apartment can't say definitively that but for that report, I would have gotten the apartment. That's a negligence claim requirement. It is not a requirement in this case.

THE COURT: My point, Mr. Fishman, is that willfulness

is hard to prove.

MR. FISHMAN: It's harder.

THE COURT: It's hard to prove generally. It's hard to prove. And negligence is much easier to prove.

MR. FISHMAN: The FCRA, your Honor, I disagree because there are two more elements in a negligence claim that you don't have in a willfulness claim. Have you causation and actual damage which you don't have in a willful claim.

And let's be clear, the standard that the Supreme Court has set for willfulness is not intentional.

THE COURT: Let that be so but still there's another remedy that you are foregoing.

MR. FISHMAN: I don't know that there's a requirement that any plaintiff in a purported class has to avail himself of every possible remedy that might be out there. Sometimes if you choose too many remedies that's grounds to not certify a class at all. So you wouldn't have a class if you elected more remedies than would result in certification because of all the individual issues. So certainly any member of the class is able to opt-out. If they want to bring an actual damage claim, they certainly can opt-out. We're no where near that stage. But for the purposes of where we are now, where we're seeking certification on the claims that we have asserted, there is really no reason why this plaintiff shouldn't be able to proceed on a willfulness claim for statutory damage and

punitive damage for a willful violation, which as the Supreme Court said is governed by a reckless disregard standard, not an intentional standard. It's not the same willfulness in common law. Under the statute it is a much lower level of conduct. As a reckless disregard meaning that you're aware of the issue. You are aware of the law's requirements and you recklessly disregard your obligation to comply with it.

And in this case --

THE COURT: You are complaining that these are misleading because they don't have up-to-date information and the updated information often cancels out what is alleged in the court action.

MR. FISHMAN: Well, misleading. It's --

THE COURT: But supposing the defendant says, well, I did the best I could --

MR. FISHMAN: That's a reasonableness question which is a question for a jury to determine hearing all of the evidence as to what they had --

THE COURT: I understand but it negates willfulness.

MR. FISHMAN: If their finding was that they acted reasonably, yes, it would negate any necessary lawsuit if the procedures were found to be reasonable, of course. But we believe that this case is unique in the sense that this defendant was sued previously for the exact same thing.

In 2004 Mr. Lesser is and I brought a case called

White against First American Saferent. They are the predecessor of this defendant. And in that case we alleged virtually the exact same violation as we have here. In Mr. White's case he had been sued for nonpayment of rent and a week later the case was he resolved and it never appeared any further and it was dismissed. Six years later the defendant reported to a prospective landlord that Mr. White had been sued in that case and the status field is identical to the one in this case which said "case filed".

We litigated that case for three years. Judge Kaplan heard the case. And it finally settled with a class-wide settlement with a certified class and an injunction. And they agreed that they would report dispositions of these housing court cases going forward. And now in 2015 when our client, when the plaintiff was the subject of a report we have the exact same problem. So if that's not willful --

THE COURT: There's a violation of the previous order.

MR. FISHMAN: No. We are not seeking to implicate a violation of the order. We brought a new action. The injunction I believe was a three-year term. And that expired I believe in '09 or '10. So we couldn't bring something to enforce that order.

But the point of it, judge, was that they were well on notice that this is a problem and that they have to report dispositions of New York City housing court cases and they

don't. And we found in 66 percent of the cases where they've prepared a report in the two-year class period, there were 4600 reports that they prepared. We went and reviewed the court records and we found that in 66 percent of those instances there was actually a disposition that occurred in the case, in that housing court case prior to the time they issued a report saying "case filed".

That I believe is more than enough to establish that we've got uniformity. We've got numerosity. We've got all of the element of Rule 23A in this case and we also meet the adequacy and the superiority under 23(B)(3).

THE COURT: All right. Let me hear what Mr. St. George says. I'll come back to you if I need to.

MR. FISHMAN: Thank you, judge.

MR. ST. GEORGE: Good afternoon, your Honor.

THE COURT: Afternoon.

MR. ST. GEORGE: Your Honor, this is a case about our procedures and you've heard nothing about them. That is because they varied and the relevant inquiry whether we willfully violated the FCRA as to any particular class member would vary depending on the circumstances of the record that was reported, the time and how it was collected by Corelogic, how it was updated thereafter, how was audited thereafter, which entity collected it because there's a distinction in the class period here of different entities that collected. It was

initially Corelogic and then turned over to another vendor. All of these facts would relevant to our defense. All parties agree that if an objective assessment are reasonableness. And like most reasonableness determinations this is not subject to a categorical resolution divorced from the circumstances of the individual records and reporting.

It's simply not something and to be clear the majority of the cases to consider EV classes have rejected them finding that this provision of a statute is not amenable class treatment. We cannot resolve all of these questions in one fell swoop.

Let me give you a number of examples as to how Corelogic would defend any particular case brought against it for any particular class member and recognize as well, your Honor, that if there are multiple records reported on a particular report we would defend each one of them. There is no way this can be resolved in mass.

The first way that we would with defend this case is we would look at when was the record collected versus the time that it was reported? Because that's material. That could be reasonable. If there's a really short delta in that time period then when we went to the public access terminal to collect the record, if there's a short period of time that elapses thereafter and the courts reported, well then, a jury could well find that factor favoring reasonableness and that

happened here.

Ms. Feliciano's record was collected three weeks before was reported. That's it. And that fact would vary for every single class member. There's no way that you could try that issue in mass because you'd have to go into the metadata for each of our reporting and figure out when was this collected directly at the court house --

THE COURT: There is an argument against willfulness rather than an attack on commonality.

MR. ST. GEORGE: It's an attack on commonality because this issue would be non common. You would have to look at each specific class member's report in terms of when it was collected versus when it was generated.

Let's talk about our procedures. So the record shows that Corelogic for each of those records after it collected it directly at the courthouse, mindful, the same way they that claim a class should be certified here. This is all they've done. They've gone to the same public access terminals that we use but somehow they claim that that's a rigorous procedure for purposes of certification but it willfully violates the FCRA.

THE COURT: I don't understand.

MR. ST. GEORGE: It's a completely hypocritical argument for them to make.

THE COURT: I don't understand.

MR. ST. GEORGE: Their class list that they proffered

to you, they sent two untrained researchers to the public access terminals to look up cases that they had requested to see in discovery and they wrote down what they saw. They did that in 2019 of course and they are trying to make representations about what the terminal might have reflected going back to 2015 because there is literally no evidence as to what it reflected at the time that it collected it.

That's the same process Corelogic used. Corelogic sent its field researchers directly to the terminal. How can they get up and say that was a willful violation of the FCRA, but use that same process to certify a class? Let me tell you about --

THE COURT: This goes to whether or not there was willfulness.

MR. ST. GEORGE: No, because -- well, that hypocritical point is whether or not they could even use this same process to certify a class that they'll have to impugn at trial. They should be estopped from doing that.

THE COURT: I don't understand the connection.

MR. ST. GEORGE: OK. Using the same process they've proposed class lists to you. Those class lists were generated by going the New York City Public Access terminals, punching in case numbers and writing town the information that's reflected for the cases. That is the same process that Corelogic used to generate these underlying reports. Now, that process would

vary when you get down to the actual reporting because you'd have to determine, well, for instance when did we collect it versus when did we report it?

Actually, our process is a lot stronger than the process that they used as well too because we didn't just stop when we collected a record. Without a disposition, your Honor, we went back every month for six months to see whether or not that record then had a disposition associated with it.

So why is that relevant for class? Well, for every record that we reported that they proposed to have on their class list, based on the date that it was collected versus the time that it was reported Corelogic may have gone back one month to see if there has been a disposition. It may have gone back two, three, four, five, six times. That would vary for every single record at issue here. It is not something that's amenable to class resolution.

and as the defense we'd be entitled to present consistent with our due process. You'd also have to look at the records themselves which would be relevant. Here for the plaintiff for instance, by the time that Corelogic collected the record it was nine months old. Nine months old and it didn't have a disposition, which is common. Even plaintiff's class risks reflect housing court cases that have gone on for years without a disposition seeming abandoned by the parties.

Corelogic would be entitled to argue that viewing a

record at a public access terminal that is nine months old at the time that it's reported is a material fact to determine the reasonableness of reporting that record without a disposition. We've submitted record evidence establishing that in historical experience of our field researchers that these cases generally went to disposition and are abandoned within six months. But the age of record at the time that it was reported, meaning how old it was when it was collected and then reported, would again vary for every single class member.

There's also a lot of failings of proof in this case, your Honor, discovery that simply wasn't taken and it's far to late to take a now. So the liability theory that the plaintiffs are advancing here is that Corelogic should have somehow back stopped going directly to the public access terminals at the courthouse. So going to the courthouse itself in viewing these records and collecting them that we should have somehow back stopped this process with a data feed from the Office of Court Administration. That's their liability theory. But they didn't get the data feed. It's never been produced in this case. Nobody has ever seen it. So to even try their liability theory you would have to see whether or not the record was even in the OCA data feed for purposes of then supplementing our activity. But there's no record of what the OCA data feed would then reflect.

You can't get to trial on a class basis because they

don't have the data. And even if they did have the data, you'd have to look at every single version of that electronic data feed to see whether or not it was even possible to supplement any data being reported by Corelogic.

So you have blearing issues of proof. There's also multiple vendors involved during this time period. Corelogic started reporting these records -- the class here, your Honor, goes back to 2015. That's the proposed class period. And from 2015 beforehand until 2017 Corelogic was sending its own field researchers to the public access terminals.

In 2017 there's a switch. They start using LexisNexis. LexisNexis in turn has its own subcontractor that use called NYE that's going and collecting the records for LexisNexis. There is no discovered at NYE. They didn't take it. So you've got class members that implicate a vendor that they've taken no discovery of in this entire case and whose procedures with respect to the little discovery they did conduct with LexisNexis had been shown to vary from the procedures of Corelogic.

There not even continuity in terms of practices, vendors, et cetera and they simply didn't take any discovery. They tried, your Honor. They moved to reopen discovery after class certification briefing closed but your Honor denied that motion for lack of diligence in terms of discovering any information further from LexisNexis and NYE.

The other thing I want to mention too, your Honor, talking about how this case would be tried. So you've got the differences and the collection date versus reporting dates. You've got the differences and age of the records at the time that their collected and reported. You've got the differences in terms of how many update cycles were applied to each record. You've also got audits that are conducted by Corelogic of records. Meaning that every month Corelogic would also generate a random list of cases and send out a supervisor to go view that record again at the public access terminal to see whether or not it had been accurately keyed into its system.

So again, we'd be able to test for any particular class member that they proposed whether that class member's record was audited. None of this is capable of class-wide resolution, let alone the distinctions between the vendors that simply weren't just discovered in this case.

There's also really systemic problems with the class lists themselves, your Honor, that have been proposed to you today. So those class lists which were attached, proposed class lists are attached as Exhibit 29 and 30 to the motion for a class certification. And basically, they delineate their two lay witnesses that they hired in the middle of this litigation to go to public access terminals and write down information about cases. So we've already identified errors in their data transcription and we've presented those in our opposition

briefs. We've tested just a small sample of what they collected. It was not possible during the time period we had for our opposition to try and run down all the records. So we tested about 200 and found errors in a number of them. We presented some of those to the Court.

But there's also really other systemic issues with the class list. So their class definition, your Honor, depends on a specific type of disposition being that was apparently in the underlying paper file but that we didn't report. So in order to be a class member under the class definition proposed amended complaint you have to have had a judgment or a case that was reported without a disposition by Corelogic where in fact despite apparently no showing up on the public access terminal, that there had been a disposition of a discontinuance, a withdrawal or a dismissal. That's it. It's those three.

The class lists make no distinction among types of dispositions. There's no record as to the class members that would even meet their own class definition. All they've done for you is to go to the public access terminal and to see whether or not they apparently found a disposition. But that's not the class. That type of disposition could be judgment in favor of the landlord. But that's not their class. Their class is limited to specific types of disposition and they aren't a part of the record and apparently that they never

sought a discovery.

But wait. There's even more problems with their class lists. So just last Friday I was produced documents for the fist time. Six months after close of discovery I get an e-mail from Mr. Fishman's firm that attaches some PDF documents and Excel spreadsheets. Again, I don't know why they were produced for the first time last Friday. But they showed something pretty interesting. They showed that their field researchers if a case was listed as inactive meaning it wasn't active in the court system any more, they viewed that as a disposition. So those people are a part of their class. And that's a big problem because that's not a disposition. Inactivity of an underlying court record is not a disposition. It's not a dismissal. It's not a discontinuance. it's not a withdrawal. In fact, it's not anything. It's not a disposition. So that late document production showed some serious errors.

You could see that for instance with respect to the named plaintiffs. OK? So if you take the named plaintiff's record. It shows up on Exhibit 29. It's a lengthy spreadsheet. You go down to row 862, that's Ms. Feliciano. It doesn't say her by name but it's got her case number. So it's the case that she is challenging, the one that she says makes her an adequate and typical as representative class. If you scroll over to the side it says there's a disposition of May 29, 2015. But that's not true.

If you look at the actual screen shot of the court terminal that they presented for you at Exhibit 28 to their motion for class certification it just says it's inactive. It's an inactive case. So the named plaintiff using the process that they described that they propose for class certification does not even meet the standard of the class definition. Because her case is apparently inactive on the public access terminal. It's not dismissed. It's not withdrawn. It's not discontinued.

And this is a huge problem not just for Ms.~ Feliciano because the proof they presented to the class or to you for her does not even meet the class definition that they proposed. The public access terminal doesn't show a dismissal or discontinuance or a withdrawal for her. It shows inactivity.

What does it show inactivity for? Conversion. And that's because the systems and the public access terminals were being converted at this time. This is a huge and systemic problem where they've apparently taken the code of inactive and marked that as a disposition for untold numbers of class members. Again, we don't have any idea in the record as to how many people --

THE COURT: I think I've got your position.

MR. ST. GEORGE: OK. There's two other big picture issues here as well that are issue for purposes for class certification. So all those issues are how would the case

possibly be tried on a class-wide basis. Two other issues here.

The first as I mentioned is they haven't actually presented any proof of the class. The spreadsheets are --

THE COURT: Say that again.

MR. ST. GEORGE: The spreadsheets that they've given you, Exhibits 29 and 30 they say they're the class, that's their proposed class list, they just reflect whether or not there's been a disposition. OK? But their class definition requires it to have been a specific type of class. It has to be a discontinuance or a withdrawal or dismissal. So you don't actually any proof of anyone that meets their own class definition according to their own record evidence that they've built for you today.

The other issue here is they went and gathered this information in 2019. So they sent their field researchers to the terminals that they hired at the very end of discovery period, never disclosed to us. So they send these people and they finish up their work apparently in 2019 and they are looking at public access terminals. Whereas, Corelogic was looking at the same public access terminals all the way back to 2019 which is when his class period starts. And they say uh-huh, there's a disposition of the public access terminal in 2019. Therefore, there is an inaccuracy and we can prove that one of multiple elements of our claim. But there is no

correlation between what was shown on the public access terminal in 2015. These public access terminals of course are subject to change by the courts and there's no evidence they took no discovery of the court system at all. They did not depose a single representative.

THE COURT: I think you've made these points already.

MR. ST. GEORGE: So all I'm saying to finish up, your Honor, is that what they've presented to you as evidence of an inaccuracy with the public access terminal isn't evidence of what the public access terminal showed in 2015, 2016, 2017, 2018 and is there no evidence as what the terminal showed.

THE COURT: I believe that the defendant's argument against certification is an argument that the merits of the case can't be won by the plaintiff. That's premature at this point. I think the requirements of Rule 23 are satisfied.

There is numerosity I think if I accept the definition of commonality and person jurisdiction, standing, there's typicality, class representatives are adequate and the class issues I believe predominate over the individual issues. The class members are ascertainable although there seems to be some dispute as to who they are and I think all these criteria of Rule 11 is met. We'll write our order in a few days and issue it.

All right. So let me ask you this, Mr. Fishman, assuming you get such favorable order, what's the next step?

MR. FISHMAN: Well, your Honor, what remains outstanding is we have yet to do any expert discovery.

THE COURT: What are you going to do about mailing the notice?

MR. FISHMAN: Well, we need the names from the defendant. They haven't given that to us. They have the names from their spreadsheet. We had originally asked for the actual reports then he had refused.

THE COURT: So they've given you the names?

MR. FISHMAN: The names and the last known address.

THE COURT: OK. How many are there?

MR. FISHMAN: 2600.

THE COURT: All right. So you are going to mail it to them?

MR. FISHMAN: Yes, we would do a mailing.

THE COURT: Are you going to do a form notice?

MR. FISHMAN: Yes.

THE COURT: Is that the next step?

MR. FISHMAN: Well, in that process, yes, but the class purposes, yes, for the litigation.

THE COURT: When are you going to issue the notice to the class?

MR. FISHMAN: Whenever your Honor tells us we'll do it.

THE COURT: Soon?

MR. FISHMAN: 60 days.

THE COURT: OK. So the next procedure is to submit to me a form of class notice after clearing it with defendant and ask me to sign it and that will be the next step.

MR. FISHMAN: OK.

THE COURT: And then the class will be identified according to opt-outs.

How about the litigation itself?

MR. FISHMAN: Well, as I said, your Honor, we have yet to do the expert discovery. That was put aside.

THE COURT: What's the expert discovery going to tell us?

MR. FISHMAN: Well, we have an expert, likely, we'll have two experts. One on the New York City Housing Court system which is the expert that was certified by Judge Engelmayer in the Winning case, as well as by Judge Kaplan in the White case. And also an expert on the computer systems itself because one of things we're alleging here is that they had this electronic data feed.

THE COURT: Apart from the two experts, what else do we need before you are ready for trial?

MR. FISHMAN: I assume there is going to be a dispositive motion on other either side but --

THE COURT: Have you finished your depositions?

MR. FISHMAN: We did all the deposition of the fact

witnesses. The last two were done this week of the people that had done our spreadsheets.

THE COURT: Mr. St. George, are you planning to have a motion for summary judgment?

MR. ST. GEORGE: Most likely, your Honor, yes.

THE COURT: You are not sure?

MR. ST. GEORGE: I would suspect that we would.

THE COURT: And is it necessary to have the expert discovery before you make your motion?

MR. ST. GEORGE: Most likely, your Honor, yes.

THE COURT: So you've got to go to go ahead with your expert discovery. Are you going to have any experts?

MR. ST. GEORGE: Most likely, yes. We would entertain probably having an expert. First of all, there would have been to be an opportunity for rebuttal of whatever experts.

THE COURT: It would be two rounds and I'd like you to discuss the two rounds and give me an order that establishes the dates.

MR. FISHMAN: Do you want us to submit that to you? We'll talk amongst ourselves and get you an order.

THE COURT: Right.

MR. FISHMAN: Your Honor, I --

THE COURT: The dates will be binding. No adjournments.

MR. ST. GEORGE: Your Honor, I also anticipate there

will at least for a motion for Rule 23(F) appeal if you certified a class. Obviously, that could delay proceedings as well.

THE COURT: Who decides that?

MR. ST. GEORGE: The motion will be presented to the Second Circuit. It's an interlocutory appeal as a matter of right. They have the discretion of whether or not to hear it. First of all, I think we'll need to see your order. There may a basis for reconsideration of your order.

THE COURT: Don't make a motion. Take it up with the Second Circuit.

MR. ST. GEORGE: Well, I even think there's fundamental issues that aren't being addressed here. The case can't be tried as a class but who would be in the class? Are these inactive individuals, for instance, class members. We don't have any class debt. We don't know who is dismissed, discontinued or withdrawn or who are we sending the notice to. There is no record of that.

THE COURT: Mr. Fishman, who is getting the notice?

MR. FISHMAN: The 2600 people that we identified.

MR. ST. GEORGE: But they are a not class members.

THE COURT: Don't argue with each other.

MR. FISHMAN: The 2600 people that we've identified who are the subject of a report where a disposition occurred prior to the time the report was issued.

THE COURT: That's the class, isn't it?

MR. ST. GEORGE: That's not the class.

THE COURT: That's the class, isn't it?

MR. ST. GEORGE: That's not the class. The class is those individuals -- so you can have people getting a class notice where the judgment was in favor of the landlord. This is not possible that these people could have suffered any harm.

THE COURT: We could work that out as we --

MR. FISHMAN: Judge, I think it's a simple solution here.

THE COURT: We've got the solution. You've got the 2600 members.

MR. FISHMAN: That's the solution.

MR. ST. GEORGE: But those aren't the class members.

THE COURT: I've heard enough. All right. So we'll issue the order. The defendant will probably file an appeal but during that appeal I want you to do your expert discovery. I would like a submission by Wednesday. Give me the dates for the experts' discovery.

MR. FISHMAN: The 24th, I believe.

MR. LESSER: If I may, your Honor, I've discovered over the years that judges have different views on length of opt-out period.

THE COURT: I don't have any particular views.

MR. LESSER: We'll suggest something.

THE COURT: Work it out together.

MR. LESSER: Thank you.

So we can't send out the class notice until the appeal is exhausted.

MR. FISHMAN: I don't know what the timeframe is for them to even take an appeal.

THE COURT: I think the Second Circuit if it takes the matter would like to see a notice, a proposed notice. So work that out. You're going to move ahead on the numbers and move to settle the notice. The defendant's going to move to the Second Circuit to see if he can file an appeal. You are going to give me a set of dates for your expert discovery and we'll finish all discovery in the case, right?

MR. FISHMAN: That should do it.

THE COURT: Right?

MR. ST. GEORGE: Yes, your Honor.

MR. FISHMAN: By the 24th you want the names of the experts and the schedule?

MR. ST. GEORGE: I think that's the schedule.

THE COURT: It's a schedule. And one of the dates will be when you identify your expert when you give me your report. I want this to move forward until a time when you are finished so I can have a status conference with you after you've finished all of these proceedings and decided where to go.

If there is an appeal and the Second Circuit makes the determination about that, then we'll know where we are in trying the case.

OK. Did I cover everything?

MR. FISHMAN: I believe so, judge.

MR. ST. GEORGE: My only question is again, relates to the class notice. Who is the class at this point?

THE COURT: The 2600 people.

MR. ST. GEORGE: OK.

THE COURT: OK. Folks, thanks.

(Adjourned)